IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 467

THOGER GRONBERG JUNGERSEN,

Petitioner,

v.

OSTBY and BARTON COMPANY and AMERICAN ASSOCIATES, INC.,

Respondents.

RESPONSE TO PETITION FOR REHEARING

The petition for certiorari, which petitioner here seeks to have reconsidered, is directed to securing a review by this Court of so much of the judgment of the Circuit Court of Appeals for the Third Circuit, as held claims 5 and 6 of Jungersen patent No. 2,118,468 invalid.

There is, however, no conflict of decisions with respect to those claims.

The District Court below refused to read into claims 5 and 6 limitations which were not there and held them "anticipated and invalid" (R., pp. 29a-30a; 65 F. Supp. 652, 657). The Court of Appeals affirmed "For the reasons stated in the opinion of Judge Meaney" (R., p. 378; 163 F. 2d 312).

In *Jungersen* v. *Baden*, the District Court for the Southern District of New York held

> "that the claims (1 to 4, as well as 5 and 6)* are all invalid because anticipated and for want of invention.

* Parenthesis ours.

Claim 6 is also invalid because it describes an old article in terms of a process of manufacture" (69 F. Supp. 922, 928).

And this decision was affirmed by the Circuit Court of Appeals for the Second Circuit (..... F. 2d ....., 76 U. S. P. Q. 488).

It appears, therefore, that this petition is not within the ambit of Section 5 (b) of this Court's Rule 38.

Respectfully submitted,

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EDWARD WINSOR,
Counsel for Petitioners.

New York, N. Y.,
April 26, 1948.